

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8241 OF 1990

WITH

SPECIAL CIVIL APPLICATIONS NO.8760/90, 1440/91, 1441/91,
1442/91 & 1439/91

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed
to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy
of the judgment ?
 4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950, or any order made
thereunder ?
 5. Whether it is to be circulated to the Civil
Judge?

PRESIDENT, SHRI JETPUR KELAVANI MANDAL --
MANAGER, SHRI GK & CK BOSMIYA ARTA & COMMERCE COLLEGE
JETPUR, & ORS.
VERSUS
ROKAD R. VALJIBHAI & ORS.

Appearance:

In SCA No.8241/90, 8760/90

MR AR THAKKAR for Petitioners
MR AD OZA for Respondent No.1
MR JR NANAVATI for Respondent No.2
MR HL JANI for Respondent No.3

In SCA No.1441/91, 1439/91, 1440/91, & 1442/91

MR HL JANI for Petitioners

MR AD OZA for Respondent No.1

MR JR NANAVATI for Respondent No.2

MR AR THAKKAR for Respondents No.3 & 4

Coram: S.K. Keshote,J

Date of decision: 09/05/97

C.A.V. JUDGMENT

All these Special Civil Applications have arisen from the common order of the Gujarat Affiliated Colleges Service Tribunal at Ahmedabad dated 13th November 1990 and hence the same are being disposed of by this common order. Reference may also have to two other Special Civil Applications No.8244 of 1990 and 8759 of 1990 which were also listed on the Board today, but the petitioners therein have withdrawn those petitions.

2. Four teachers (lecturers), working in G.K. & C.K. Bosmiya Arts and Commerce College, Jetpur, Dist.Rajkot, in different subjects, filed individual applications before the Tribunal having the apprehension of termination of their services as part time lecturers. In those applications, the Management, the college and the Director of Education were impleaded as parties. The Saurashtra University was also impleaded as a party. The Special Civil Applications have been filed by the Director of education and by the Management. So the four Special Civil Applications have been filed by one of respondents, Education Department, in the applications and other four Special Civil Applications have been filed by respondent, Manager of the College, in those applications, and thus in all eight Special Civil Applications in this Court.

3. The facts of the case in brief are that the G.K. & C.K. Bosmiya Arts and Commerce College at Jetpur, District Rajkot, is owned and run by Shri Jetpur Kelavani Mandal. This college is affiliated to the University of Saurashtra. The respondent No.1 in the two sets of petitions are working as part time lecturers in the said college, in different subjects. The applicant-respondent No.1 in Application No.65/90 was appointed as a part time lecturer in Sanskrit on 20th January 1986, the applicant-respondent No.1 in Application No.66/90 was

appointed as a part time lecturer in Gujarati on 4th December 1987. The applicant-respondent No.1 in Application No.67/90 was appointed as a part time lecturer in the subject of Psychology on 26th September 1988 and the applicant-respondent No.1 in Application No.67/90 was appointed as a part time lecturer in Hindi on 3rd October 1986. These part time appointments of respondent No.1, in these applications have been recognised by the University. The Department has sanctioned four part time posts in the aforesaid subjects and the Department has sanctioned salaries of these lecturers as part time teachers. The qualification for the part time teacher as well as for the full time teacher is same. The student strength and work load increased and as such, the college asked for no objection certificate from the Department for making full time appointment in the subjects of Sanskrit, Gujarati, Psychology and Hindi. The Department granted no objection certificate to the college subject to conditions that on filling of the full time posts in the four subjects, the aforesaid part time posts shall be abolished and second that all these four posts have to be filled in from the Schedule Caste/Schedule Tribe and Other Backward Class (SC/ST & OBC, for short) candidates. Out of these four posts, the post of lecturer in Gujarati was reserved for ST. The post of the subject of Sanskrit was reserved for ST. The post for lecturer in Hindi was reserved for SC, and the post for lecturer in Psychology was reserved for OBC. After the grant of no objection certificate, the college has taken the step to fill up these posts. Applications were invited for these four posts by publishing an advertisement in newspaper. Under the same advertisement, applications were also invited for the post of lecturer in English and Home Science. However, these posts were for general category candidates. Applications were also invited for full time lecturer in Home Science against leave vacancy (i.e. for four months). Applications have further been invited for part time lecturers in Commerce and Computer, open seats and the post of lecturer in Commerce (for six) months. This advertisement was published in daily newspaper, 'Fulchab' dated 12th August 1990. After this advertisement, these four part time teachers approached the Tribunal by filing the applications. The grievance has been made by them that the management is trying to fill in the posts by appointing permanent lecturers by selection and these posts have also been reserved for the candidates belonging to SC/ST and OBC. Further grievance has been made that instead of making direct selection, these teachers who are working as part time lecturers should have been made permanent. Moreso when their

services are likely to be terminated on full time lecturers being appointed on these posts.

4. The Tribunal has allowed the applications filed by the teachers and directions were given to the college to appoint these teachers as full time teachers in their respective subject with effect from 1.12.90. The Department was directed to sanction these conversion and also the salaries of teachers admissible for the purpose of grant. Further direction was given that it will be open to the Department to fill remaining posts by ST and OBC candidates. Hence these Special Civil Applications by the Department and the Management.

5. Shri H.L.Jani, learned counsel for the Department contended that the Tribunal has exceeded in its jurisdiction to direct that the posts which are reserved should be treated as unreserved. It is a matter of policy of the Government which post should be reserved and which should not be reserved. Reservation has to be provided by the Government and in such matters, the Tribunal has no jurisdiction, moreso to the extent of going to order the posts which were reserved to be dereserved. It has next been contended that to convert the posts from reserved to unreserved category, three attempts are required to be made by issuing advertisement for filling the said post and then if the candidate of reserved category is not available, then the matter dereserving the posts is required to be considered. Unless the State Government approves the conversion, the Management has no right to fill any reserved post by appointing a candidate from unreserved category by direct recruitment. Lastly, the learned counsel for the petitioner contended that the posts sanction on which these teachers were working are part time and now for the the appointments to be made on the full time post, selection has to be made in accordance with the Ordinance of 188 of Saurashtra University. These teachers were appointed only as part time. They were paid salary on the part time basis and even if the qualifications are same for part time and full time, and they have been appointed after selection as part time teachers, they do not acquire any right to be made permanent on full time post. If i case these course is adopted, then the very purpose and object of two types of posts, i.e. part time and full time, will be defeated. Moreover, it will be detrimental to reservation policy.

6. The learned counsel for the management has supported the contentions made by the learned counsel for the Department.

7. On the other hand, the learned counsel for the teachers contended that these teachers were appointed as part time teachers, but after selection. The educational qualifications for the part time and full time teachers are same and the process of selection is also same and when they have worked for a considerable period, on creation of full time post, the holder of the part time post should have been absorbed and the Department could not have asked the Management to fill up the posts by making direct selection. It has next been contended that the right of consideration for the full time post of teachers working part time has been denied by reserving these posts for SC/ST and OBC candidates only. The part time teachers, after they worked for some years, should have been regularised instead of proceeding to fill up those posts by open selection. Shri A.D. Oza, learned counsel for one of the teachers, by making reference to Ordinance 165 of Gujarat University, copy of which has been passed over, contended that as per the said provision, part time teacher should have been made regular on full time post. The learned counsel for respondent-teachers contended that the Tribunal has all the power under the Gujarat Affiliated College Service Tribunal Act to order for dereservation of reserved post. Lastly it is contended that the Tribunal has passed a just and reasonable order and as such, this Court, sitting under Articles 226 or 227 of the Constitution of India may not interfere with the impugned order, more so when these teachers are working for last many years.

8. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

9. In these Special Civil Applications, on 20th September 1991, this Court has ordered as under:

"The matter is pending for confirmation of interim order granted earlier. The dispute revolves around the subjects of Sanskrit, Gujarati, Psychology and Hindi. The dispute is mainly because while the management wanted to fill up the posts in connection with these subjects and for the purpose when they approached the State Government for no objection Certificate, while granting the same, two riders were added. One was that on filling up of the post all part timers will go and that all these four posts of full time shall be specifically reserved for candidates from S.T. S.C. and other backward communities.

Now, obviously therefore, if the recruitment drive which has been permitted to the management by the earlier interim order is to cover any of these subjects in view of the aforesaid contents of the no objection certificate a situation may arise that the concerned teacher who happens to be the person affected and therefore, had approached the Tribunal for affiliated Colleges would be faced with a situation that even if they succeed ultimately they may lose the job because the posts are no longer available. In this regard L.A. Shri Nanavati made a statement that instructions that they shall not fill up the posts in connection with any of those subjects except for Gujarati where the Teacher has gone away after tendering resignation. It is clarified that so far as the subject of Gujarati is concerned the appointment if any of the incumbent shall be subject to the result of this petition, which would be mentioned clearly in the appointment orders if any.

10. The holder of the part time post of lecturer in the subject Gujarat has left the services of the school after tendering resignation and this Court has permitted the management to make the selection on the full time post of lecturer in subject Gujarati. The selection and appointment on the post of lecturer in the subjects namely, Sanskrit, Psychology, & Hindi could not be made so far as this Court has granted interim relief against the selection. In view of the order of this Court dated 20th September 1991, and the fact that the holder of part time post of lecturer in Gujarati has tendered the resignation, the grievance of applicant-respondent Shri Rokad Ravjibhai Veljibhai does not survive and the application No.66/90 filed by him before the Gujarat Affiliated College Service Tribunal at Ahmedabad has otherwise become infructuous. The Special Civil Applications, both by State and the Management challenging the order made by the Tribunal in the aforesaid application of that teacher have also become infructuous. Accordingly, the Special Civil Application No.1441/91 and Special Civil Application No.8241/90 are dismissed as having become infructuous.

11. None of the parties in these Special Civil Applications have produced on record of the proceedings, the order of the Government granting sanction for creation of part time post of lecturer in the subjects Sanskrit, Hindi, Psychology and Gujarati, nor the order

of appointment of these four teachers thereon.

12. However it is not the case of the petitioners nor the petitioners have produced on record any Resolution or Circular or any Provision in the Act or Rule providing that on creation of full time post of teachers in the subjects concerned in respect of which subject earlier the part time post was created, the holder of the part time posts has acquired right or more so indefeasible right of appointment on the post so created. The petitioners are also unable to produce on record any resolution or circular how a particular post of teacher created from time to time are to be reserved for SC/ST/OBC. However, the learned counsel for the petitioners does not dispute that the posts of teachers in the colleges created from time to time are to be reserved to the extent of percentage of reservation prescribed for the respective casts as per law. The learned counsel for the petitioners also do not dispute that the reserved posts are to be carried forward for three years and only in case thereafter suitable candidates are not available from the reserved category, then only the posts can be dereserved and this power exclusively lies with the Government and the Management has nothing to do in the matter.

13. Now, I proceed to decide the submissions made by the learned counsel for the parties. The first contention is regarding the power of Tribunal in the matter of reservation policy of the Government for the for SC/ST/OBC in public employment as well as how the posts are to be reserved. I find sufficient justification in the contention of the learned counsel for the petitioner that it is a matter of policy of the Government which post should be reserved and which post should not be reserved. The reservation has to be provided by the Government. Similarly, the contention of the learned counsel for the petitioner has merits that the power to dereserve the post lies with the Government and until the post is dereserved, the Management has no power or competence to fill up the post from the candidate of General Category. The learned counsel for the respondents-teachers has not produced on record of the proceedings, nor during the course of arguments has pointed out any Resolution or Circular or any other Order of the Government or any other provision of the Act or Rule laying down how the recruitment to the post of part time teachers is to be made in the colleges. It is also not the case of respondents-teachers in these Special Civil Applications that recruitment to the post of part time teachers has to be made by selection committee which

has been provided for selection of full time post of lecturers in the colleges. However, the respondents have contended, which is uncontroverted by the learned counsel for the petitioners that the qualification for appointment for the post of part time lecturers and full time lecturers are same. However, in my opinion, all the persons eligible and may be more meritorious for appointment of part time lecturer may not apply for the part time posts, as the meritorious persons may not like to go on part time post. Articles 14 & 16 of the Constitution of India confer on a citizen who fulfil the requisite qualifications prescribed for appointment in public employment, a fundamental right of consideration for the appointment. It is not the case of respondents-teachers that on giving them appointment as part time lecturers, it has been given out to them that on creation of full time posts, they will be taken on that post without there being any process of selection. The respondents-teachers have not produced on record any material to show and establish that while making the appointment on the part time posts the Management has given out that on creation of full time posts in the subjects, the holder of the part time posts will automatically be absorbed on the respective posts. If it would have been so, the matter would have been different and some semblance of justification would have been there in the claim of respondent-teachers. On creation of full time post of lecturers, all the eligible candidates have a right of consideration for appointment. In case these part time lecturers are taken on the full time posts, without giving opportunity to the eligible candidates, this action will certainly be violative of Articles 14 and 16 of the Constitution of India. The Government, by creating full time posts of lecturers in the four disciplines, in which earlier part time posts have been created, has not committed any illegality or has not exceeded powers by putting a condition that on selection and appointment on the full time posts, the part time post shall stand abolished. That condition has been put within the competence and is in consonance with provisions of Articles 14 & 16 of the Constitution of India. It is not the case where the services of respondent teachers are sought to be terminated for accommodating other part time teachers, but their services are sought to be terminated only on availability of selected candidates on full time posts of lecturers in the subjects. The post of the lecturers has to be filled in by open selection on which, there is no dispute. The full time posts are required to be filled in conformity with Articles 14 & 16 of the Constitution of India and in absence of any service Rules and Regulations, all the

candidates who would have otherwise been eligible are entitled to apply for when advertisement is made and seek consideration of their claim on merits according to rules for direct recruitment alongwith all eligible candidates. The appointment on part time basis cannot be a conduit pipe for appointment on full time post created which would be a back door entry, detrimental to the efficiency of service. The learned counsel for one of the teachers, in the set of these petitions with reference to the Ordinance 165 of Gujarat University contended that on creation of full time post, the part time teacher holding the post in the subject, should have been absorbed and selection could not have been made. But this Ordinance is of little help to the teacher for the reason that it nowhere specifically provides that in all eventualities, the part time post holder should be absorbed on creation of full time post and secondly this Ordinance is of Gujarat University, to which the college in which the respondent teachers were appointed is not affiliated. Admittedly, the college is affiliated to Saurashtra University. The learned counsel for the petitioners made a reference to Ordinance 188 of the Saurashtra University. This Ordinance starts under the Chapter, "Terms and Conditions of Service of Full Time Teachers in Affiliated Colleges". The Ordinance 188 provides the terms and conditions of service laid down of the full time teachers working in private colleges affiliated to that University and applicable to all full time teachers, i.e. Principals, Professors, Lecturers, Tutors, Demonstrators, and Physical Training Instructors. It is provided that all the college managements shall abide by these terms and conditions in relation to the teachers employed by them. Sub clause 23 of the Ordinance 188 of Saurashtra University provides that recruitment to the post of principals and lecturers of the affiliated colleges shall be made strictly on merit and on the basis of wide publicity by advertisement and selection. An obligation has been put on the college management to call for interview each and every candidate whose application has been received by the management in time and provided he fulfils all the qualifications and experience laid down by this University. The management has to send, alongwith the minutes of the selection committee, a list and synopsis showing the names of all the candidates whose applications have been received by the management, containing therein the information regarding their academic qualifications, age, experience etc. In absence of the list aforesaid, no appointment shall be considered by the University for approval. Further stringent provision has been made that in case it is found at any stage after the approval of appointment has been

communicated by the University, that the candidates qualified according to requirements laid down by the University have not been called for interview or if it is found that incorrect information has been supplied to the University by the management, it shall be open for the University to cancel the approval of the appointment and the recognition of such a person as a teacher shall automatically stand withdrawn. The selection committee has been provided for the post of lecturer, which consists; (a) Chairman of the Governing body of the college or his nominee, (b) a nominee of the Vice Chancellor, (c) two experts to be nominated by the Chairman out of the panel of experts approved by the University, (d) Principal of the college, (e) Head of the Department concerned of the college, & (f) a representative of the Director of Education. This Ordinance further provides that no selection shall be considered valid unless atleast one expert is present. The recommendation of the Selection Committee shall be subject to the approval of the Vice Chancellor. Reference has also been made to the Ordinance 188-B of the Saurashtra University. Clause 1 of this Ordinance provides for minimum remuneration payable to part time teachers. Clause 2 of this Ordinance provides that part time teachers shall not be entitled to any kind of allowances. Clause 6 provides that a part time teacher shall not work simultaneously at more then two affiliated college. From clause 8 of this Ordinance, it is borne out that the part time teachers are not entitled to the benefit of provident fund or gratuity. Clause 12 of Ordinance 188-B provides that a part time teacher who has accepted the appointment in an affiliated college shall be bound to join and serve for atleast one academic term and if he fails to do so without reasonable cause, he shall not be considered as a recognised teacher for appointment in an affiliated college or a recognised institution for one year. Clause 11 provides that in case the part time teacher leaves the service without due notice and joins any college affiliated to the University, the Syndicate may not approve his appointment in the new college or recognise him as a teacher for one academic term. Clause 14 provides that in case the part time teacher applies for any post at another college affiliated or recognised institution by that University, he shall invariably send his application through the Head of his college and in case of breach of this condition, the Syndicate may not approve his appointment in an existing or a new college or recognised institution or a University Department or Centre for one year. Clause 15 provides that part time teacher shall not conduct private tuition for remuneration. The Ordinance 188-B nowhere

provides that on creation of permanent post, the part time teacher has to be absorbed thereon and the management has no power to make any selection on this post. A conjoint reading of the Ordinances 188 and 188-B of the Saurashtra University leaves no doubt in the mind of the Court that the part time teachers have not been conferred any right of absorption on creation of full time post in the subject and secondly that on creation of permanent post, the said post has to be filled in by open selection by selection committee, constitution of which has been provided in Ordinance 188 and that appointment is subject to approval by the University. As stated earlier, many of the meritorious candidates may not choose to apply for the part time job when recruitment is made thereon and the reasons are not self evident from the reading of Ordinance 188-B. The part time lecturer only gets minimum remuneration provided under clause 1 of Ordinance 188-B. No other allowance is paid to him and furthermore there are many restrictions. Even he is not permitted to join elsewhere as part time teacher, nor he is entitled to conduct private tuitions for remuneration. Over and above, he is not entitled for provident fund and gratuity. In absence of any provision in the Ordinance, Resolution, Circular, Act or Rule of the Government, the part time teacher in the college has no right of absorption on the full time post created in the subject and as such, in view of this position of law, the Tribunal, in the present case, has exceeded its jurisdiction in giving direction to the college to appoint the part time teachers as full time teachers in their respective subjects with effect from 1.12.90.

14. The next question for consideration is the competence of the Tribunal to go on the question of reservation and dereservation of the posts. The full time posts which have been created in Sanskrit, Gujarati, Hindi and Psychology were reserved for SC/ST/OBC. Two posts were reserved for ST, one for SC and one post for OBC. The Tribunal had found fault with the reservation of posts on the ground that the posts should have been reserved in these subjects only where the posts in other subjects were not reserved. The Tribunal has given out that subject wise reservation could not have been made and as such, the no objection Certificate defeats the claim of the applicants, to be considered for the posts, and it may also be detrimental to the reserved category candidates. One observation has also been made; that an employee joins the institution not merely for the part time post but for a career as full time. In this background, the Tribunal has given direction that this kind of rigid and specific no objection Certificate

cannot be sustained and the posts of four subjects were ordered to be dereserved and those part timers were ordered to be made full timers. The Tribunal has further observed that taking into consideration the total strength of lecturers as 30 in the college as per the Government reservation policy four posts are to be reserved for ST, two posts for SC and three posts for OBC. The Tribunal has further held that the college had already one teacher in ST category, two in SC and two in OBC category. So the ratio fall short of three ST candidates and one OBC candidate. The no objection Certificate has been given for eight posts of lecturers out of which four posts of the subjects Gujarati, Sanskrit, Hindi and Psychology are reserved for SC, ST and OBC respectively and rest of the posts were unreserved. The Tribunal has given out that in case the reservation is made subject wise, then it is doubly disadvantageous to the backward class candidates.

15. I have gone through the Judgment of the Tribunal carefully. The advertisement which has been given by the management for making selection on the post of lecturer in different subjects are as under:

1. Full Time Lecturer in Gujarati : 1
Reserved for ST
2. Full Time Lecturer in Sanskrit : 1
Reserved for ST
3. Full Time Lecturer in Hindi : 1
Reserved for SC
4. Full Time Lecturer in Psychology: 1
Reserved for OBC
5. Full Time Lecturer in English : 1
Unreserved
6. Full Time Lecturer in Home Sci. : 1
Unreserved
7. Full Time Lecturer in Home Sci. : 1
Leave Vacancy (Only for Four
Months)
Unreserved
8. Full Time Lecturer in Economics : 1
Unreserved -- Preference to
Post Graduate

9. Part Time Lecturer in Commerce : 1

For six months

10. Part Time Lecturer in Computer : 1

Part time Lecturer in Computer

Programme : 1

16. So, in all ten posts were advertised out of which two posts were of part time. The Tribunal has given out that in case the reservation is made only for the post of Gujarati, Sanskrit, Hindi and Psychology, a teacher who may be eligible candidate for the post of lecturer in Economics, under reserved category, will not get appointment as the said post is unreserved and it will be detrimental to the interest of that category. I fail to see any justification in this approach of the Tribunal. Same reason can be given in case the post of Economics is reserved whereas these posts are notified as unreserved. So, it is for the Department to decide post of which subject is to be reserved and in this matter, the Tribunal has no power of judicial review. It is for the Department to decide to what extent the post of lecturer in different subjects can be filled in by reserved category candidates. Reservation is on the posts and not in the subjects. In the cadre/category/post where there are different subjects, the posts are not interchangeable and promotions are also restricted to the next higher post in subject only, the reservation is of the post and not of subject. A lecturer of English cannot be promoted to the next higher post of another speciality. In the case of teaching post reservation has to be there and the Department has to take a conscious decision which of the post of in which subject should be reserved. However, some time there may be possibility of non availability of teachers in a particular subject from the reserved category, but it is difficult to make out a full workable arrangement for reservation of the post of lecturers. The Tribunal has been influenced by the fact that the respondent teachers were already working as part time and as such, this view has been taken but in case the part time posts would not have been there in the subject concerned, then the question arises whether the Tribunal has any jurisdiction to go on this question. However, the Tribunal could have gone into the question that the reservation could not have been made more than what it is provided. The Tribunal can also go into the question that the posts may not be reserved for the reserved category where the requisite percentage of that reserved category have already been filled in. But it cannot go on the question that in a particular subject only reservation should be there. Moreover, the Tribunal has

not considered the fact that in the subject of Home Science, three attempts have been made by the Management to get the candidates from the reserved category, but it could not get it. The very provision that only after making three attempts a post can be dereserved gives a full answer that the Department has competence while sanctioning the post, to put a condition of reservation in the subject concerned. It is not the case of the respondents-teachers that in the subjects Gujarati, Sanskrit, Hindi and Psychology earlier three attempts have been made and the candidates from reserved category were not available. A post which is reserved for a particular category can only be dereserved where after making three attempts candidates of that category are not available and not otherwise. These posts were for the first time created and as such only after three attempts have been made, the same could have been dereserved. In view of this fact, the Tribunal has exceeded its jurisdiction in ordering dereservation of these posts. The matter needs consideration from another aspect. In different subjects, from time to time, part time posts are created and on part time posts, as it appears from the facts of this case, appointment has not been made subject to any reservation. There may be a reason for it that the teachers are immediately required and in a subject concerned, the reserved category candidate may not be readily available. So, in case on creation of permanent post in those subjects, these very teachers are to be absorbed, the reserved category candidates will not get appointments on the posts reserved for them and in case all these posts are filled in by the candidates from general category, as directed by the Tribunal, then for all the years to come, there will be shortfall of reserved category posts. What the Tribunal stated was that future vacancies may be reserved. That is to say, in the meanwhile till the full time posts are created, part time appointments may be made and on creation of full time post, those persons will be absorbed, and as such, it will be endless procedure and at no point of time the reserved category candidates will get appointment on the basis of reservation policy. However, the facts which have been stated regarding the number of posts of reservation in a particular category and the appointments made of the candidates of a reserved category are not disputed. As per the discussion of the Tribunal, which has not been challenged by the petitioners, three posts could have been filled in by ST candidates, as it was the shortfall of that number in that category. There was no shortfall in the SC category, but curiously enough, the post of lecturer in Hindi has been reserved for SC, which is exceeding

reservation quota. So to that extent, the advertisement of the Management suffers. However, the holder of the part time post in the subject Hindi will not get automatically his appointment on the full time post of lecturer in Hindi. It is for the Department to consider the matter afresh whether the post of lecturer in Hindi should be reserved for ST or not. This matter is of the year 1990 and for all these years, the Management could not have proceeded with the process of recruitment started by the advertisement in question and the Department should take immediate decision on this question.

17. In the result, all Special Civil Applications No.8760/90, 1439/91, 1440/91, & 1442/91 are allowed and the order passed by the Gujarat Affiliated Colleges Services Tribunal at Ahmedabad, in Applications No.65, 66, 67, and 76 of 1990 is quashed and set aside. However, the post of lecturer in Hindi at Sr.No.3 of advertisement, dated 12.8.90, is ordered to be deleted. It shall be open to the Department to pass necessary order of grant of no objection Certificate for full time lecturer in Hindi afresh as per law. As this post is created long back, the Department is directed to pass necessary order in this respect within a period of one month from the date of receipt of certified copy of this order and thereafter the Management shall take necessary steps of filling up this post within a period of six months from the date of receipt of no objection Certificate from the Department. In case the post of lecturer in Hindi is not reserved, it shall be permissible for the part time lecturer in this subject to apply for this post and take a chance for selection and in his way, the age bar will not come. Rule is made absolute in aforesaid terms in Special Civil Applications No.8760/90, 1439/91, 1440/91, & 1442/91. Rule discharged in Special Civil Applications No.8241/90 & 1441/91. No order as to costs. Interim relief granted by this Court in these petitions on 20.9.91 stands vacated.

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